

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6452 of 1984

Date of decision: 5-5-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

M G BHAGAT

Versus

STATE OF GUJARAT

Appearance:

MR MC BAROT for Petitioner
Mr.H. L. Jani for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/05/97

ORAL JUDGEMENT

The facts which are not in dispute are that the petitioner was selected as Clerk/Surveyor by the Selection Committee and after necessary training he was appointed as Pot Hissa Surveyor, which post he joined on 3-4-1978. The pay-scale of Surveyor at the relevant time was Rs.290-480 and the petitioner was given appointment in the said pay-scale. Under notification dated 18th February, 1978 cadre of Clerk-Surveyor of the Land Records Department has been bifurcated with effect from 1st April, 1977. After this notification, options were given to those who were appointed prior to 1-4-1977 to go to the cadre of Surveyor or to the cadre of Clerk. Under order dated 10th December, 1984 the pay of the petitioner was fixed in the pay-scale of Rs.260-400 with effect from 3-4-1978.

2. No reply to this special civil application has been filed. The contention raised by the counsel for the respondents is that the petitioner was appointed as Surveyor. On his own request he got himself transferred to the post of Clerk and as such under the impugned order his salary was fixed in the pay-scale of Clerk from 3-4-1978. However, on putting question, counsel for the respondents admitted that even after posting the petitioner as clerk he was given the pay-scale of surveyor. The counsel for the petitioner contended that it is a case where he got himself transferred at the place of his choice where the post of Surveyor was not there and he was placed against the post of clerk, but he had never given out that he would forego all the claims of the post of Surveyor while opting for the post of Clerk. All that he has foregone is only T.A. and D.A. as well as seniority. However, I do not consider it proper to decide these questions on merits as admittedly the order dated 10-12-1984 has been made without giving notice or opportunity of hearing to the petitioner. Under the impugned order the petitioner was sought to be placed in the lower payscale from 3-4-1978, and as such it has civil consequences. It is a case of reduction of pay of the petitioner and such order could have been passed only after following the principles of natural justice, which has not been done in the present case.

3. Operation of the impugned order has already been stayed by this court and it has remained stayed for all these years. On this short ground this petition deserves acceptance.

4. In the result the petition succeeds. The order dated 10-12-1984 at annexur-B passed by respondent No.4 is quashed and set aside. However, quashing of this

order does not mean that the respondents have no power to pass appropriate order after giving notice of hearing to the petitioner. This judgment will not come in the way of the respondents to pass fresh order in the matter after following the principles of natural justice. Rule made absolute in the aforesaid terms. No order as to costs.

.....